

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN -7 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BRANDON C.,)	2 CA-JV 2011-0007
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, FIONA C., and AIDEN C.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18987800

Honorable Stephen M. Rubin, Judge Pro Tempore

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Amanda Holguin

Mesa
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 Brandon C. appeals from the juvenile court's January 2011 order terminating his parental rights to his son Aiden, born July 1, 2008, and daughter Fiona, born January 12, 2007.¹ Brandon argues the court's termination of his parental rights was not supported by sufficient evidence.

¶2 “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable factfinder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 In February 2009, Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), received reports that Brandon had physically abused the children and that he and the children's mother, Jessica C., were using marijuana in the home and had a history of domestic violence. After removing the children, ADES filed a dependency petition alleging Brandon and Jessica were unable to parent due to domestic violence and substance abuse. The juvenile court adjudicated the

¹Although the juvenile court also terminated the children's mother's parental rights, she is not a party to this appeal.

children dependent and approved a reunification plan that included domestic violence and relationship counseling. Shortly thereafter, Brandon and Jessica separated.

¶4 Brandon participated fully in services and demonstrated ongoing sobriety. ADES eventually granted Brandon unsupervised visitation and informed the juvenile court that it planned to transition the children back to Brandon's care. After Brandon and Jessica reconciled in October 2009, however, ADES suspended unsupervised visitation due to the couple's history of domestic violence. Brandon was informed that the reconciliation could jeopardize his reunification with his children, but, according to his case manager, Brandon "appeared to be fine with that."

¶5 In October 2009, Brandon and Jessica argued about a text message Jessica had received on her cellular telephone from a former boyfriend, culminating in Brandon pushing Jessica out of his parked car. Over the next several months, both parents continued to participate in services, but, according to a therapist, failed to take responsibility for the recent incident or address issues in their relationship. After a February 2010 review, the juvenile court continued the plan of reunification but warned the parents that if "there was not a real significant improvement with . . . domestic concerns over the next three months, . . . [it would] put a different plan in place."

¶6 By May 2010, the juvenile court granted ADES discretion to return the children to Brandon and Jessica's care. On May 28, however, Brandon was arrested for disorderly conduct after he and Jessica had argued at a laundromat and Brandon pushed Jessica to the ground after she tried to retrieve a cellular telephone he had taken from her.

ADES again suspended unsupervised visits and filed a motion to sever Brandon's and Jessica's parental rights, which the court granted after a four-day hearing. As to Brandon, the state alleged, pursuant to § 8-533(B)(8)(c), that the children had been in out-of-home placement for fifteen months or longer, that Brandon had failed to remedy the circumstances causing his children to be in out-of-home placement, and that he would be unable to exercise proper and effective parental care and control in the near future. In granting the motion, the court noted that, despite being provided with sufficient services to address the domestic violence problems, Brandon had "a long history of violent behavior," had been involved in two domestic violence incidents with Jessica while the case was pending, and had reunited with Jessica despite knowing "it would result in restricted contact with his children and would delay reunification."

¶7 Brandon asserts on appeal that there was not clear and convincing evidence that he had failed to remedy the circumstances causing his children to be in out-of-home placement or that he would be unable to exercise proper and effective parental care and control in the near future.² *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 996 P.2d 682, 685 (2000) (state must prove statutory ground for termination by clear and convincing evidence). Brandon suggests the juvenile court placed undue weight on his "long history of violent behavior," asserting that the finding was based on

²Brandon does not question the juvenile court's determination that the children had been in out-of-home placement for the required fifteen months or longer, that ADES had provided sufficient reunification services, or that termination was in the children's best interests. *See* § 8-533(B)(8)(c).

his behavior as a child and that his behavior had been ameliorated by his therapy. But Brandon does not refer to any evidence suggesting the court relied solely on his conduct as a child in concluding he had a history of violent conduct. As the state points out, apart from the two incidents of domestic violence that occurred after the dependency proceeding began, Brandon admitted that he had difficulty managing his anger, that he had “grabbed Jessica [by] the side of the neck and threw her” during an altercation in 2007, and that he had punched holes in the walls of their bedroom out of anger, as recently as May 2010. This evidence permits the inference that Brandon has a history of violent behavior and continues to exhibit such behavior. And the court was not required to accept his therapist’s assertion that Brandon was in control of his anger issues, particularly in light of the recent incident of domestic violence. And several other service providers opined Brandon had not resolved those issues and had not benefitted from the services provided.

¶8 Brandon also argues, however, that the incidents of domestic violence that occurred immediately before and during the dependency proceeding did not warrant termination of his parental rights. But his argument primarily seeks to minimize his conduct during those incidents, ignoring conflicting evidence, which was for the juvenile court to weigh. *Jesus M. v. Ariz. Dept. of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (“The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings.”). For example, Brandon points out that he

testified that he did not, as Jessica claimed, push her out of the car. But Jessica reported that he had done so. Similarly, in discussing the 2007 incident before the dependency proceeding began, he asserts he reacted “viscerally” to Jessica striking him by “pushing her aside.” Jessica reported, however, that she had struck him because he was choking her.

¶9 And Brandon suggests the juvenile court put undue weight on the domestic violence incidents because he was never charged or convicted of a crime, nobody was injured, and the children were not present. But those facts did not preclude the court from concluding that Brandon had failed to remedy the domestic violence concerns. As the court noted, the final incident occurred just seven weeks after Brandon and Jessica had agreed to a “safety action plan” that required them to refrain from any act of domestic violence or aggression and to “walk away from any [domestic] situation before it becomes violent or dangerous.” And there was ample evidence that ongoing domestic violence would harm the children.

¶10 Finally, Brandon suggests the juvenile court erred in severing his parental rights because, although “he had not quite remedied the circumstances at the time of trial,” he might “in the foreseeable future.” But Brandon is not entitled to unlimited time to resolve those issues—“the window of opportunity for remediation” is not indefinite. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994). The evidence described above amply supported the court’s conclusion that Brandon would not resolve the domestic violence issues in the near future. And the court

readily could reject his assertion that he would not seek to reinitiate a relationship with Jessica—Brandon had previously claimed the relationship had ended but nonetheless had reconciled with Jessica despite being told it could jeopardize his reunification with his children. Further, the case manager testified ADES was concerned Brandon would continue that relationship.

¶11 For the reasons stated, we conclude sufficient evidence supported the juvenile court’s conclusion that Brandon had not resolved the domestic violence issues and that he would not resolve them in the near future. We therefore affirm the court’s order terminating Brandon’s parental rights to Aiden and Fiona.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge